

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

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SUBJ: PERSONNEL SECURITY PROGRAM

1. PURPOSE. This change transmits revised pages to Chapter 12, Adverse Security Actions.

2. EXPLANATION OF CHANGES. This change clarifies existing procedures and provides instructions to agency personnel for taking adverse actions when a servicing security element determines that employment of an individual in a sensitive position, and granting access to classified information, if applicable, is not consistent with the interests of the national security. It also adds a due process procedure which a security element must follow when taking an adverse security action.

3. DISPOSITION OF TRANSMITTAL. After filing the revised pages, this change transmittal should be retained.

PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
v and vi	9/19/89	v vi	9/19/89
87 thru 90	9/19/89	87 thru 92	


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CHAPTER 12. ADVERSE SECURITY ACTIONS

* 1200. GENERAL. This chapter prescribes procedures which FAA personnel shall follow upon receipt of information about an employee or applicant which may result in an adverse security action. Such actions include denial, suspension, or revocation of a security clearance for access to classified information; and suspension and removal from employment under 5 United States Code Section 7532.

1201. PRELIMINARY ACTIONS.

a. Upon receipt of information which raises questions concerning the personnel security fitness of an individual, the personnel security officer shall immediately assess the security factors involved and shall recommend to the servicing security element manager suitable action to assure that national security interests are protected.

b. In making a recommendation, the security officer shall consider such factors as the conclusiveness and seriousness of the information developed, the employee's access to classified information, and the opportunity the position affords the employee to commit acts contrary to national security interests.

c. Under this chapter the servicing security element can:

(1) Suspend a security clearance;

(2) Revoke a security clearance;

(3) Deny a security clearance; or,

(4) If there is an immediate threat to national security, recommend suspension and removal from employment under 5 U.S.C. Section 7532.

d. The servicing security element shall consult with the Office of the Chief Counsel (headquarters cases) or Assistant Chief Counsel (region and center cases) prior to taking any action under this chapter which may result in an appeal to the Merit Systems Protection Board or which involves suspension and removal under 5 U.S.C. Section 7532.

1202. SECURITY CLEARANCE DENIAL, SUSPENSION, AND/OR REVOCATION.

a. Suspension. If a decision is made to temporarily suspend a security clearance pending investigation to determine if revocation of the clearance is warranted, and the suspension

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* exceeds 10 days, the servicing security element shall notify the employee in writing that it has suspended the clearance and why, to the extent consistent with the interests of national security.

b. Post Suspension.

(1) After the security clearance is suspended, but prior to a determination on whether to reinstate or revoke it, management may, in its sole discretion: Restrict the employee to the nonsensitive duties of the position, temporarily reassign the employee to a nonsensitive position with the same grade and pay, or place the employee on administrative leave with pay. Administrative leave should be considered only if the other options are not viable.

(2) Management also may, in its sole discretion, indefinitely suspend, without pay, an employee whose security clearance has been suspended. Before doing so, however:

(a) The servicing security element shall notify the employee in writing, to the extent consistent with the interests of national security:

(1) That the security clearance is being suspended;

(2) Why the clearance is being suspended, including the event that will end the suspension (e.g., a decision to reinstate or revoke it);

(3) That the employee has 10 days from the date of the notice of suspension of the clearance to submit either an oral or written response, and any supporting documentation, to the servicing security element; and

(4) That if no timely response is received, the suspension of the clearance shall be final.

(b) If the employee submits a timely response, the servicing security element shall consider that response and any timely submitted supporting documentation in making the decision whether to suspend the security clearance.

(c) The servicing security element shall notify the employee, either orally or in writing, of the final decision to suspend.

(d) Once the suspension of the security clearance is final, and in coordination with the servicing personnel office, the employee can be indefinitely suspended from his or her position in accordance with the applicable provisions of 5 U.S.C. Sections 7511-14.

* c. Denial or Revocation.

(1) If the servicing security element decides to deny or revoke a security clearance, it shall notify the individual in writing, to the extent consistent with the interests of national security that:

(a) The clearance is being denied or revoked and why;

(b) The individual has 30 days from the date of the notification to submit a written response to the servicing security element with any supporting documentation;

(c) If no timely response is received, the denial or revocation shall be final.

(2) If the employee or applicant submits a timely response, that response and any supporting documentation timely submitted shall be considered before making a final decision. The final decision shall be in writing and shall notify the individual that:

(a) The final decision can be appealed to the Director of Civil Aviation Security Operations, ACO-1;

(b) The appeal must be in writing and must be submitted to ACO-1 within 30 days from the date of the final decision;

(c) ACO-1 shall consider any timely appeal and issue a written decision on the appeal within 30 days after receipt of the appeal.

d. Post Denial or Revocation.

(1) After the procedures outlined in 1202c have been completed and a security clearance has been revoked, and in coordination with the servicing personnel office, management may, in its sole discretion: Remove the employee under the applicable provisions of 5 U.S.C. Section 7511-14, or permanently reassign the employee to a nonsensitive position.

(2) After the procedures outlined in 1202c have been completed and a security clearance has been denied:

(a) If the individual denied a clearance is an applicant for appointment to a position for which a clearance is required, the person shall not be appointed to that position. *

* (b) If the individual denied a clearance is an employee occupying a nonsensitive position who has been selected for a position requiring a clearance, appointment or reassignment to that position shall not be made.

1203. SUSPENSION AND REMOVAL.

a. Under the authority of 5 U.S.C. Section 7532, the Secretary of Transportation may, with absolute discretion and when considered necessary, suspend without pay and then remove any FAA employee presenting an immediate threat to the national security. The Secretary's determination on removal or reassignment shall be final.

b. If the servicing security element decides to recommend action under 5 U.S.C. Section 7532, it shall prepare a memorandum to the Manager, Investigations and Security Division, ACO-300. This memorandum shall summarize the circumstances of the employee's case and the issues involved, and request departmental action to suspend and remove the employee. ACO-300 shall review the memorandum and, upon concurrence with the security element's request, forward it through ACO-1 to M-70.

c. An employee who has a permanent appointment, has completed a probationary or trial period, and who is a citizen of the United States shall be given, after suspension without pay and before removal under 5 U.S.C. Section 7532:

(1) A written statement of charges against the employee within 30 days after suspension without pay. The statement shall be subject to amendment within 30 days and shall state the charges as specifically as security considerations will permit. The statement shall cite Public Law 81-733 (5 U.S.C. Sections 7531-7533) as authority for each action.

(2) An opportunity within 30 days thereafter (plus an additional 30 days if the charges are amended) to answer the charges and to submit affidavits. The employee shall be advised that if no reply is received, the case will be decided on the information available. The employee shall be advised that the purpose of the reply shall be to respond to each of the charges with any information and supporting documents which would explain, clarify, refute, or have other significant benefit in regard to the substance of the charges. The employee's reply to the statement of charges shall be reviewed by M-70 to determine if the employee has submitted additional substantive information which justifies withdrawal of the removal action.

(3) A hearing at the employee's request. The employee must submit the request in writing within 30 days from the date of the statement of charges. M-70 shall inform the Secretary of the need to convene a security hearing board.

The Secretary shall select from the OPM security hearing board roster three persons from outside DOT. DOT shall provide a qualified attorney to act as counsel for the hearing board and shall provide necessary stenographic services to record the hearing.

(4) A review of the case by the Secretary, or some official designated by the Secretary, before a decision adverse to the employee is made final. The Secretary in his or her sole discretion may direct further investigation of specific matters, and/or reconvene the security hearing board to adjudicate additional information. If a favorable determination is reached, all officials concerned and the employee shall be so advised. If the reply does not warrant a favorable determination and the employee has not requested or is not eligible for a security hearing, M-70 shall refer the completed case to the Secretary with a recommendation that the Secretary direct removal of the employee on the basis of the stated charges.

(5) A written statement of the Secretary's decision. The statement shall also be given to all officials concerned. The decision of the Secretary shall be final.

d. After suspension without pay, an employee not covered by paragraph 1203c shall, to the extent the department determines that the interests of national security permit, be notified of the reasons for suspension. The employee shall have the opportunity within 30 days after the notification to submit any statements or affidavits to the department about why he or she should be restored to the former position. The employee may be removed after suspension without pay whenever the department determines that the removal is necessary in the interests of national security.

e. M-70 will be responsible for taking the actions specified in paragraphs 1203c and 1203d.

1204. EMPLOYMENT OF INDIVIDUALS PREVIOUSLY SEPARATED FOR SECURITY REASONS. No person who has been separated from employment with any department or agency of the U.S. Government under any Federal security program (such as 5 U.S.C. Sections 7531-33, E.O. 9835, or E.O. 10450) may be employed in the FAA without prior approval of the Secretary and determination by OPM that the factors leading to the separation are not currently disqualifying for Federal employment. When employment of such a person is proposed, the personnel security officer concerned shall assure that complete information is obtained regarding the basis for the separation, investigation of the person's subsequent activities is conducted, evidence of OPM favorable determination of reemployment eligibility has been received, and any other data needed by the Secretary for making the decision that the person's employment is clearly consistent with the interests of national security are furnished.

